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track, the fact of idiocy being unknown to him. *Daily v. R. & D. R. Co.*, 106 N. C. 301.

STATES — TORTS — PERSONAL INJURIES — NEGLIGENCE OF VOLUNTEER. — SPENCER V. STATE, 97 N. Y. SUPP. 154. *Held*, that where the foreman of a repair gang in the employ of the state and engaged in replacing the old flooring of a bridge silently acquiesced in the act of a stranger, who desired to remove boards for his own use, the state was liable for injury to a third person, resulting from the negligent performance of such act by the stranger. Parker and Chester JJ., *dissenting*.

In the absence of statute a state is not liable for the negligence of its officers in the discharge of their ordinary duties, *Chapman v. State*, 104 Cal. 690. But the maxim, "the king can do no wrong," does not imply that the state cannot do an act for which the citizen is not entitled to redress. Its real meaning is that the right to sue must be voluntarily given by the state not coerced, *Metz v. Soule*, 40 Iowa 236; *2 Blackstone 255*. If there be a statute allowing the state to be sued then we are to treat the state as an individual and the question arises, would an individual be liable in the case cited *supra*. *Haluptzok v. Gt. Northern Ry.*, 55 Minn. 446; *Booth v. Mister*, 7 Car. & P 66, hold that where a servant in the employ of the master hires another to assist him in performing acts for the master, the master is liable for the sub-servant's acts. The reasons given are diverse. It may rest upon the idea of implied authority, or of ratification, or of the negligence of the servant in directing or controlling the work, or of the duty of the occupier of premises not to permit his property to become a nuisance. The case of a volunteer is decided for nearly the same reasons, chief of which is the doctrine of implied assent, *Hill v. Morey*, 26 Vt. 78.

TELEPHONES AND TELEGRAPHS — PLACING OF WIRES — REGULATION BY VILLAGE. — VILLAGE OF CARTHAGE V. CEN. N. Y. T. & T. CO., 96 N. Y. SUP. 919. *Held*, that where a telephone company extends its lines in a village without permission of the trustees, the trustees can require such extension to be taken down and placed underground, without requiring a rival company to place its wires underground; there being no such requirement as to wires previously erected, and the rival company not appearing to have made extensions at or after the same time. McLennan, P. J., and Nash J., *dissenting*.

The right to construct a telegraph or telephone line along and upon a street or highway must be derived from an express grant of authority. *N. Y. & N. J. Tel. Co. v. East Orange, N. J.*, 42 N. J. Eq. 490. But a municipality has no right to nullify a franchise granted to a telephone company to erect poles and wires in the streets in the absence of any provision therein reserving the right. *Old Colony Trust Co. v. Wichita*, 123 Fed. 762. Where, however, the use of the streets of a city by a telegraph and telephone company is without authority, either because of the particular mode of use or because of the utter lack of authority to occupy the streets, an injunction by the city will be to restrain such future use. *St. v. Met. T. and T. Co.*, 31 Hun. 596. *Utica v. Utica Tel. Co.*, 24 N. Y. App. Div. 361. And, notwithstanding telegraph lines are instruments of commerce, a city has the right to determine how, in what manner, and upon what condi-

tions a telegraph company shall enter the city and pass through it. *Mutual Un. Tel. Co. v. City of Chicago,* 16 Fed. 309. And, while there is no power in a municipality arbitrarily to declare a forfeiture of the company's right to occupy its streets, *Abbott v. Duluth,* 104 Fed. 833, nevertheless a city cannot, by a contract which permits a telephone company to construct and maintain its line upon a certain street, deprive itself of the power to enact such legislation as is necessary for the public safety, general welfare, and Convenience. *Mich. Tel. Co. v. City of Charlotte,* 93 Fed. 11.

TELEPHONES — POLES AND WIRES IN STREETS — ADDITIONAL BURDEN. — FRAZIER V. EAST TENNESSEE TELEPHONE COMPANY, 90 S. W., 620. (TENN.). *Held,* that telephone poles and wires erected in the street do not constitute an additional burden upon the fee of abutting owners, for which they are entitled to compensation. Shields, J., *dissenting.*

Cases on this point are in irreconcilable conflict, the weight of authority being to the effect that such wires and poles are an additional burden. It is said that the erection and use of telephone wires and poles is one of the new uses over which the power of the city extends as it springs up, as well as to uses common and known at the grant of the power to the city. *City of St. Louis v. Bell Telephone Company,* 96 Mo. 623. And it is held in Missouri that telephone companies organized under the laws of the state may set their poles and wires along the public street, without compensation to owners of abutting fees, subject to regulation by the city. *The State ex rel v. Flad.* 23 Mo. App. 185. Statute giving right to erect poles and wires is constitutional though it makes no provision for compensation to the owners of the fee. *Pierce v. Drew,* 136 Mass. 75. On the other hand it is said that a telephone system not being a use to facilitate travel is an added servitude to the fee. *Union Elec. Tel. & Telg. Co., v. Applequist,* 104 Ill. Appl. 517. *Ches. & Pot. Tel. Co. v. Mackenzie,* 28 Am. St. Rpts. 219. The public easement includes the grading, paving, cleaning and lighting of the highway, the apparatus of street railways and apparatus for the protection and convenience of travelers using the way, but the right to construct a telephone line for public use is not within this easement and can be acquired upon the fee of abutting owners, against the consent of such owners, only through the power of eminent domain. *Nicoll v. Tel. Co.,* 62 N. J. L. 733; *Hodger v. Tel. Co.,* 133 N. C. 235.

TRIAL — ARGUMENT OF COUNSEL — APPEAL TO SYMPATHY. — DALLAS CONSOLIDATED ELECTRIC ST. RY. CO. V. BLACK, 89 S. W. (TEX.) 1087. *Held,* that where in an action against a corporation for injuries, the evidence was conflicting, it was prejudicial error for counsel for plaintiff to argue that plaintiff was a poor girl and defendant a rich corporation, though such facts were in evidence.

Where counsel uses language calculated to arouse prejudice in the jury, an adverse party may interpose, and if the court fails or refuses to check the abuse an exception lies. *Abbott's Brief on Civil Jury Trials.* 2nd Ed. 399. It is not within the privilege of counsel in argument to jury to use language calculated to humiliate or degrade the opposite party in the eyes of the jury. *Coble v. Coble,* 79 N. C. 589. And he may not avert the consequences of his remark by taking it back. *Wolfe v. Minnis,* 74 Ala. 386. It is the duty of the court to stop him under these circum-